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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/584,656

06/26/2006

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0388-061892

8167

28289 7590 03/09/2010
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EXAMINER

JACYNA, J CASIMER

ART UNIT

PAPER NUMBER

3754

MAIL DATE

DELIVERY MODE

03/09/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/584,656	Applicant(s) YAMADA ET AL.	
	Examiner J. Casimer Jacyna	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7, 8 and 13-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7, 8 and 13-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/28/2009</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 8, 15, 16, 18 and 20-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regard to claims 15 and 16, parent claim 7 defines a cap that is attachable to the container body wherein it is not certain if the cap attachable to the container body defined in claims 15 and 16 is the same cap or a different cap from the cap defined in claim 7. In regard to claim 8, claim 8 only defines a function of supporting the container body wherein it is not certain which element is performing the function, how the body is supported or if the body is designed to be supported on another device.

4. Claims 7, 8, 13, 14, 17-20 and 23-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Petterson 4,002,168. Petterson discloses an eye drop container including a liquid storage body 11, an instilling portion 13 that allows liquid to flow out in the opened stage when cover 14 is removed, an aerating device 27 that has a filter 26 and a check valve 25 wherein when the container is in the dispensing position as shown in figure 3 surface 29 is the bottom of the container body as claimed, note that the claims do not define any orientation for the bottom surface nor do they define what position the container is in for determining the bottom surface and when the container is in use and inverted for dispensing, surface 29 containing the aerating device 27 is on

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the bottom of the container as claimed wherein attachable cap 14 which covers the aerating device becomes the bottom cap as claimed and when cap 14 is removed the container can be placed resting on it side and tilted slightly forward so that 27 will contact a floor surface as claimed. The claims do not define what position the container is in when the aerating device contacts the floor surface. The claims only define that the aerating device is allowed to contact a floor surface when the cap is removed and with the cap removed the container can be positioned so that 27 will contact a floor surface as claimed. In regard to claim 28, aerating device 27 is on an opposite side of 29 and spaced from the instilling portion 13 and the face of 32 that includes opening 27 constitutes a support surface that is capable of contacting a floor surface as claimed.

5. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petterson 4,002,168 in view of Faurie et al. WO 02/38464. Petterson discloses a squeezable eye drop container including an outlet that can be an outlet valve member such as duck bill valve 114 in figure 23, and an outlet cap 14 substantially as claimed but does not disclose an opening member with an unopened stage. However, Faurie teaches another squeezable drop container having an opening member 18 and an unopened stage 7 for the purpose of ensuring against contamination of the liquid. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Petterson with an opening member and an unopened stage as, for example, taught by Faurie in order to ensure against contamination of the liquid.

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6. Claims 21 and 22 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

7. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-4889. The examiner can normally be reached on Mon. thru Fri. 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Casimer Jacyna/
Primary Examiner, Art Unit 3754